



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/171931

PRELIMINARY RECITALS

Pursuant to a petition filed February 3, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance, a hearing was held on March 9, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the Wisconsin Department of Health Services, by the Office of the Inspector General, correctly denied the petitioner's request for prior authorization for reimbursement by Medical Assistance of 51 hours of personal care worker (PCW) services per week for a year, plus 24 hours of PCW services, p.r.n., per year.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

Written Appearance By: [REDACTED], R.N., Nurse Consultant
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 57 year-old resident of Milwaukee County. She has difficulty in walking, and uses a wheeled walker. She has a history of falls, abnormality of gait, cerebrovascular accidents (CVA), muscle weakness, urinary incontinence, bowel incontinence, chronic lower back pain, bipolar disorder, schizophrenia, and depressive disorder. Her functional limitations include

deficits in bowel and bladder use, endurance, ambulation, and she has shortness of breath with exertion. Her mental status is “oriented, forgetful, and depressed”. She reports nighttime seizures, but she doesn’t recall them or how often they occur, and there is no indication she is taking any anti-seizure medication.

2. On October 26, 2015, the petitioner’s home health care provider, [REDACTED] filed a Prior Authorization Request (“PA/R”) with the Wisconsin Department of Health Services, Office of Inspector General, seeking approval of a regiment of 51 hours per week of personal care worker service hours for a year, plus 24 hours as needed during that same year.
3. The provider attached a copy of a Personal Care Screening Tool supporting the request to the DHS/OIG. The Tool indicated she required 51 hours per week of PCW services based upon an assessment done by an employee of the home health care agency
4. On January 13, 2016, the Department of Health Services, Office of Inspector General, issued a letter notice to the petitioner informing her that her Prior Authorization Request for approval of the regimen of PCW services identified in Finding of Fact #2, above, had been denied because the documentation provided did not establish that the requested level of PCW services was medically necessary and covered by MA as required under MA rules and policies.
5. On February 3, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the denial by the Department of her PA Request for PCW services coverage.
6. The petitioner requires partial physical assistance to bathe daily, i.e., assistance in and out of the shower, and assistance with scrubbing her body and washing her hair. She requires partial physical assistance to don shirts, pants, undergarments, socks and shoes, i.e., upper and lower body dressing. The petitioner grooms herself with supervision and prompts, and periodic physical intervention to complete tasks. She needs some assistance cleaning and prepping her dentures. The petitioner needs meal preparation, set-up, clearing, and dishwashing, but she can feed herself. She reports weak hand grasp. She can move about with her wheeled walker, but frequently requires assistance with transfers from bed or chair to walker, and occasional assistance sitting down after completing her trip within the home. She requires standby supervision when ambulating. She requires medication set-up and prompts, but can take her medications, this is reported to occur five times per day. She requires assistance to change her Depends four times per day, due to her incontinence, and despite the use of Depends, she soils her bed about every other day, so she requires frequent laundry washing and making of her bed. She requires assistance with transportation to medical appointments, and she needs housekeeping services for laundry, dishes, meals preparation, dusting, mopping, grocery shopping, and general cleaning. She receives nail care from others. She requires some minimal services incidental to her cares. Her mental health issues and back pain cause some slowness in performing cares with her PCW. See, Exhibit #1, at p. 4 and at Attachment 4.
7. A Long Term Functional Screen performed in August, 2013, assessed the petitioner as “independent” in all activities of daily living, with the exception of using a cane or walker in her home. It noted a history of multiple CVAs and transient ischemic attacks (TIAs) since 1998, but the documentation provided at that time did not support a conclusion of any major events that substantiate a decline in her functional status or ability to complete ADLs independently. See, Exhibit #1, Attachment 6. Likewise, physical exam notes from April 4, 2015, were unremarkable, and she was given a note so that she could return to volunteer work on April 29, 2015. Ibid.
8. The Consultant reviewed a Medicare Wellness visit report of July 9, 2015, that noted a rash under her breasts, but otherwise the review of systems and the physical exam were unremarkable. See, Exhibit #1, Attachment 7. The neurologic exam noted on small CVA with no residual deficits, and that she was able to do all her own activities of daily living. Ibid.
9. The Consultant reviewed medical records from the petitioner’s hospitalization at [REDACTED] on October 18, 2015. There was no clinical information about

- reasons for the hospitalization, but the Personal Cares Screening Tool seemed to suggest that she was hospitalized for a mental breakdown, not a physical problem. See, Exhibit #1, Attachment 8.
10. The Consultant reviewed treatment records for a November 16, 2015, doctor's visit for a cough. It was a respiratory infection, with no acute distress, and she was alert, oriented and cooperative.
 11. The Consultant reviewed medical records from a visit to the doctor on December 18, 2015, noted that she has "...clinical findings that support the patient's need for home care include: medication regimen with monitoring needs for signs of decompensation/adverse events and medication management, impaired skin integrity that require skin/wound status assessment, treatment and monitoring, impaired mobility required assistive device training and exercise/strengthening program, impaired balance that requires therapeutic program for functional mobility deficits and home safety, teaching needs to reinforce signs/symptoms of infection and cognitive impairment and patient requires assessment related to safety/home safety, bipolar." The physician further commented, "...skilled nursing, occupational therapy, physical therapy, and speech therapy is medically necessary skilled home health services." No specific functional limits were listed by the physician, nor was there any objective clinical data in the records or findings that support personal care worker services that meet MA program requirements for coverage. See, Exhibit #1, Attachment 11.
 12. The petitioner was seeking about 7.28 hours per day of PCW cares, in morning and evening shifts of about 3.6 hours duration each session.

DISCUSSION

Personal care services are "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community." Wis. Admin. Code, §DHS 107.112(1)(a). Covered services include the following:

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;
5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code, §DHS 107.112(b).

Personal care workers can spend no more than one-third of their time performing housekeeping activities. Like all medical assistance services, PCW services must be medically necessary and cost effective. Wis. Admin. Code, §DHS 107.02(3)(e)1 and 3.

The Personal Care Screening Tool (PCST) is designed by the Department to be a *guideline* and "tool" to achieve consistency statewide in the submission of prior authorization requests for the coverage of PCW service claims. It is not, however, a substitute for the professional review process exercised by the Department's Nursing Consultant in the approval, denial or modification of Prior Authorization Requests. The Department's Nurse Consultant will review and evaluate the merits of the actual PA Request,

supporting documents, PCST, and make a final determination on reimbursement in the PA approval process.

In this case, the provider the documentation is internally inconsistent and confusing, and sometimes at odds with the testimony of the petitioner. The Plan of Care indicates the use of a cane and walker frequently, but the petitioner self identifies primary reliance on the wheeled walker. The Plan of Care indicates “partial physical assistance” is required with dressing, bathing, and grooming; and assistance with incontinence cares and adult diaper changing four times per day. But on examination, the petitioner admits that she can do some of her grooming herself, but she “requires” supervisory standby to prevent falls. She, and her representative, affirmed the list of cares I have stated in Finding of Fact #6, above.

I have reviewed the testimony and the clinical evidence, and I believe that the petitioner needs a significant amount of PCW services due to her history of CVAs and TIAs, back pain, mental health conditions, and generalized mobility deficits, but the amount of medically necessary PCW services hours requested here has not been established by this inconsistent and unsupported medical documentation effort. The physician’s conclusions are not specific as to her PCW or home health care needs, general, and seem quite overbroad. The clinical documentation provided here by the home health agency is simply insufficient to establish the medical necessity of the requested regimen at 7.5 hours *per day*. The level of care asserted is not supported by the clinical evidence, and this insufficiency has been compounded by the multiple medical records from 2013 and 2015, that do not note any real impediments to the petitioner performing her own activities of daily living. See, Findings of Fact Nos. 6-12, above. And see, Exhibit #1, and all Attachments. See also, Exhibit #2.

At this point I cannot conclude that the Department erred in denying the requested PCW services because the petitioner’s provider has not established the clear medical necessity of a be given significant regimen of PCW services for the high level of 51 hours per week. The agency denial must be sustained. The petitioner would be well-advised to file a new Prior Authorization Request demonstrating the hours required to meet her medical needs, with appropriate physician approval of the specific PCW tasks and regimen, and a full set of clinical documents. This decision does not preclude her from filing a *new* Prior Authorization Request for PCW hours with better documentation of her needs. In particular, much better documentation of the frequency of nighttime seizures, the severity of the seizures, CVAs, and TIAs, and frequency of falls is needed to support the concept of having a PCW simply doing meals, cleaning house, doing laundry, and standing by to assist at the rate of nearly 7.5 hours per day. Rather, it means that the current request has been too poorly supported with clinical documentation to establish medical necessity of the large quantity of 51 hours per week of PCW services, and a year’s duration merely compounds the inadequacy of the request.

CONCLUSIONS OF LAW

That the Department of Health Services, by the OIG, has correctly denied the petitioner’s prior authorization request for PCW services of 51 hours per week because the medical documentation does not establish that this high level of cares is required and medically necessary.

THEREFORE, it is

ORDERED

That the petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 10th day of March, 2016

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 10, 2016.

Division of Health Care Access and Accountability